IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.115 and 116 of 2007

The Commissioner of Income Tax
Salem. .. Appellant in both appeals

versus

The Manager
State Bank of India
Nangavalli
Salem. .. Respondent in both appeals

PRAYER: Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai, even dated 21.2.2006 passed in I.T.A.No.1734/Mds/2003 and I.T.A.No.1284/Mds/2003 against ITA Nos. 170 & 171-A/2001-2002, dated 6.6.2003 and 8.4.2003 on the file of the Commissioner of Income Tax (Appeals) Salem against GIR No. /PAN/TAN/No.S.1821-B(IS)/Salem, dated 31.5.2001 on the file of the Joint Commissioner of Income Tax, Spl. Range, Salem-respectively.

For appellant : Mr.J.Naresh Kumar
Standing Counsel for Income Tax

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JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

These appeals are preferred by the Revenue, questioning the order of the Tribunal, that the Tribunal was not right in law in holding that the clearance from the Committee on Dispute was mandatory for entertaining the appeal. The Revenue has also questioned the correctness of the Tribunal in dismissing the appeal without going into the merits of the case.

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2. It is seen that the assessee Bank is a Government of India Undertaking. The assessing authority levied penalty for the failure to file the annual T.D.S. Return. Against that order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Accepting the reasons given by the assessee, the Commissioner deleted the penalty and allowed the assessee's appeal. An appeal was preferred before the Tribunal by the Revenue in respect of the Assessment Year 1999-2000 and 2000-2001 as against the order of the Commissioner, deleting the penalty under Section 272A(2)(c) of the Income Tax Act.

3. In the appeal preferred by the Revenue before the Tribunal, the assessee took a preliminary objection that as per the directions of the Hon'ble Supreme Court in the case of ONGC Vs. COLLECTOR OF CENTRAL EXCISE reported in 1992 (Suppl. II) SCC 432, the Revenue ought to have obtained the approval of the Committee on Dispute for processing the appeal before the Tribunal. The Tribunal noted that nothing was placed before the Tribunal to substantiate the action, if any, taken by the Revenue for obtaining the approval of the Committee on Dispute. Consequently, the Tribunal dismissed the appeal. It, however, reserved the liberty to move the Tribunal to recall the case in the event of the Revenue explaining the reasons for the delay in getting the approval satisfactorily, to the Tribunal. Aggrieved by this, the Revenue has preferred these appeals.

4. Learned Standing Counsel appearing for the Revenue, submitted that the order of the Tribunal was unjust and arbitrary. Although the grounds of appeal taken in the appeals presented before this Court are mainly on the merits of the levy of penalty, the questions of law raised in the Tax Cases are as follows:

> "(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that clearance from Committee on Dispute was mandatory for entertaining the appeal is valid in law?
>
> (ii) Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was right in law, without going into the facts and circumstances of the case and dismissed the appeal in limine, is valid? "

5. We fail to appreciate the plea of the Revenue that the failure to obtain the approval from the Committee would not be fatal to the maintainability of the appeals. It must be noted that the Tribunal referred to the decision of the Apex Court reported in 1992 (Supp-II) SCC 432 (ONGC Vs. COLLECTOR OF CENTRAL EXCISE) and held that no litigation between the Government and the Government

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Undertaking could proceed before any Court without the approval of the High Power Committee known as COD. Further, the Apex Court, in the decision reported in 2004 (267) ITR 647 (MAHANAGAR TELEPHONE NIGAM LTD VS CHAIRMAN CBDT), held as follows:

> "Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are over-burdened with a large number of cases. The majority of such cases pertain to Government Departments and/or public sector undertakings. As is stated in *Chief Conservator of Forests' case* [2003] 3 SCC 472 it was not contemplated by the framers of the Constitution or the Civil Procedure Code that two departments of a State or Union of India and/or a department of the Government and a public sector undertaking fight a litigation in court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in co-ordination and not confrontation. The mechanism set up by this court is not, as suggested by Mr. Andhyarujina, only to conciliate between Government Departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High Powered Committee. If it can, the High Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a pubic sector undertaking. This could be prevented by the High Powered Commitee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the Department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the Department/public sector undertaking finds the decision unpalatable, discipline requires that they

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abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done."

6. Having regard to the statement of law pronounced by the Apex Court and considering the fact that the Tribunal has given the liberty to the Revenue to prosecute the appeal on obtaining the approval and explaining the delay, we do not find any reason to disturb the order of the Tribunal. Hence, the appeals are dismissed at the admission stage. There will, however, be no order as to costs. M.P.No.1 of 2007 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv

To:

1.The Asst. Registrar,
Income Tax Appellate Tribunal,
Rajaji Bhavan, Besant Nagar,
Chennai-90.

2.The Commissioner of Income Tax (Appeals)
No.3, Gandhi Road,Salem.

3.The Joint Commissioner of Income Tax,
Special Range, Salem.

4.The Commissioner of Income Tax,
Salem.

+1cc to Mr.N.Muralikumaran, Standing Counsel Sr 12006

MM (CO)
km/23.3.

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